

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In Re: NEW YORK CITY ASBESTOS LITIGATION

Hon. Joan Madden
(Part 11)

This Document Relates To:

Index No. 114120-06

CHRISTIAN HOLINKA,

Plaintiff

-against-

A.W. CHESTERTON COMPANY, et al.,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF THE LABORATORY SUPPLY
DEFENDANTS' JOINT MOTION *IN LIMINE* TO PRECLUDE EVIDENCE
REGARDING THE PRESENCE OF DEFENDANTS' CATALOGS IN THE
LABORATORIES IN WHICH PLAINTIFF WORKED OR STUDIED BECAUSE
THERE IS NO EVIDENCE THAT ANY OF THE PRODUCTS AT ISSUE WERE
ORDERED FROM THOSE CATALOGS**

Defendants Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"), ManorCare Health Services, Inc. (alleged to be a successor in interest to Central Scientific Company, a division of Cenco, Inc.) ("ManorCare"), Fisher Scientific International Inc. ("Fisher"), VWR International, Inc. ("VWR") and Univar USA Inc. ("Univar") (collectively, "Defendants") respectfully submit this memorandum of law in support of their joint motion *in limine* to preclude Plaintiff Christian Holinka ("Plaintiff") from offering testimony or evidence that Defendants' catalogs were present in any of the laboratories in which Plaintiff worked or studied during his career because there is no evidence in the record that the products at issue – Bunsen burner pads and heat-resistant mittens – were ever ordered from any of those catalogs.

PRELIMINARY STATEMENT & RELEVANT FACTS

In this products liability case, plaintiff Christian Holinka ("Plaintiff") alleges that Defendants¹ (or their alleged respective predecessors) supplied Bunsen burner pads and heat-resistant mittens to various laboratories in which Plaintiff studied, researched, and/or worked over a thirty year period. Plaintiff claims that his exposure to asbestos fibers contained within those two products caused him to develop mesothelioma.

However, Plaintiff has failed entirely to identify which of the Defendants, if any, supplied the pads or mittens to any of the laboratories in which he worked or studied. Indeed, Plaintiff's lone product identification evidence consists of his testimony that Defendants were the "standard suppliers" of laboratory products during the relevant time periods because he purportedly saw some of the Defendants' catalogs in one or more of the labs. (*See* Affirmation of Greg A. Dadika, Esq. ("Dadika Aff."), Exh. A, Excerpts from Transcript Volume II of Deposition of Christian Holinka ("2T"), 2T98:13-23). Plaintiff candidly admits, however, that he did not order the products at issue -- Bunsen burner pads and heat-resistant mittens -- from those catalogs. (*See id.*, 2T158:25 to 159:16).

In addition, Plaintiff acknowledged that other companies' catalogs were also present at the same time -- indeed, approximately *twenty* other companies -- and that he does not know whether those other companies sold pads or mittens to the laboratory in which he worked. (*See id.*, 2T161:10 to 162:8). Most importantly, Plaintiff admits he does not know whether the laboratories in which he worked and studied purchased pads and mittens from Defendants or

¹ However, Univar USA Inc. contends that it is not a successor to the lab supply business of Van Waters & Rogers.

from any of the other companies whose catalogs were present. (*See id.*, 2T163:6-13; 174:16 to 177:5).

LEGAL ARGUMENT

I. THIS COURT SHOULD PRECLUDE PLAINTIFF FROM INTRODUCING EVIDENCE OF THE PRESENCE OF DEFENDANTS' CATALOGS IN THE LABORATORIES IN WHICH PLAINTIFF WORKED AND/OR STUDIED BECAUSE SUCH EVIDENCE HAS ABSOLUTELY NO PROBATIVE VALUE AND IS HIGHLY PREJUDICIAL

When the probative value of evidence is slight and its illegitimate emotional appeal on the jury is great, the evidence should be excluded. *See* Richard T. Farrell, Prince, Richardson on Evidence § 4-206, at p. 145 (11th ed. 1995) (citing *People v. Singer*, 300 N.Y. 120, 89 N.E.2d 710 (1949); *Allen v. Stokes*, 260 A.D. 600, 23 N.Y.S.2d 443 (1st Dept. 1940)); *see also* *Minichiello v. Supper Club*, 296 A.D.2d 350, 352, 745 N.Y.S.2d 24, 25 (1st Dept. 2002); *Stevens v. Amar Atwal, M.D.*, 30 A.D.3d 993, 994, 817 N.Y.S.2d 469, 471 (4th Dept.); *U.W. Marx, Inc. v. Bonded Concrete, Inc.*, 7 A.D.3d 856, 859, 776 N.Y.S.2d 617, 620 (3d Dept. 2004).

In addition, New York courts have acknowledged that the mere presence of a product at a plaintiff's worksite, without more, is insufficient to establish that the plaintiff used that product. *See Cawein v. Flintkote Company*, 203 A.D.2d 105, 106 (1st Dep't 1994) (reversing denial of summary judgment and holding that the mere presence of an unopened bag of defendant's asbestos fiber at plaintiff's worksite was insufficient to prove that plaintiff was exposed to defendant's product).

Here, Plaintiff has not – because he can not – testified that he used *any* specific product supplied by *any* specific Defendant. Instead, Plaintiff has only testified that he used unidentified Bunsen burner pads and mittens, and that Defendants' catalogs were present at one or more of the laboratory sites in which he worked or studied. Applying the logic of *Cawein*, it follows that

if the actual *presence* of an asbestos containing product at plaintiff's worksite – but no evidence of exposure to or use of the products at issue by plaintiff – cannot carry plaintiff's burden of proof, then certainly the mere presence of Defendants' *catalogs* in certain of the laboratories in which Plaintiff worked and/or studied (which were only a few among many other catalogs), and with no evidence that any asbestos-containing products specifically from Defendants were present, cannot sustain Plaintiff's burden of proof here either.

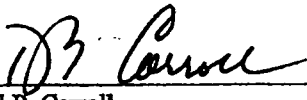

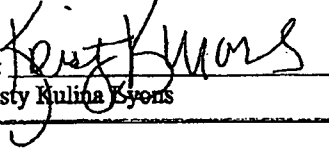
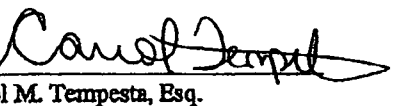
Accordingly, allowing testimony of evidence of the presence of Defendants' catalogs at the laboratories in which Plaintiff worked has no probative value as to whether or not Plaintiff *actually used* a pad or mitten supplied by any one of the Defendants. Indeed, Plaintiff should be barred from presenting such evidence at trial because such testimony would only serve to create illegitimate emotional appeal to the finder of fact. Therefore, given that such testimony has absolutely no legal significance, and it will only act to prejudice Defendants, this Court should preclude the same.

CONCLUSION

Based upon the foregoing case law and legal analysis, this Court should grant Defendants' motion *in limine* and preclude Plaintiff Holinka from presenting evidence or testimony of the presence of Defendants' catalogs at his laboratory worksites because such testimony (i) has no legal significance of proving whether or not Plaintiff actually used or was exposed to any of the Defendants' products and (ii) will only prejudice the Defendants' ability to obtain a fair trial.

Dated: August 22, 2007
New York, New York

Respectfully submitted,

DRINKER BIDDLE & REATH LLP 140 Broadway, 39 th Floor New York, New York 10005 (212) 284-3140 Attorneys for Defendant Baxter Healthcare Corporation By:  Daniel B. Carroll	REED SMITH LLP Princeton Forrestal Village 136 Main Street, Suite 250 Princeton, New Jersey 0850 (609) 987-0050 Attorneys for Defendant ManorCare Health Services, Inc. By:  Greg A. Dadika
HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP 40 Paterson Street New Brunswick, New Jersey 08901 (732) 545-4717 Attorneys for Defendant Fisher Scientific International Inc. By:  Kristy Kulina Lyons	MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C. 530 Saw Mill River Road Elmsford, NY 10523 Attorneys for Defendant VWR International, Inc. and Univar USA Inc. By:  Carol M. Tempesta, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In Re: NEW YORK CITY ASBESTOS LITIGATION

CHRISTIAN HOLINKA,

Plaintiff

-against-

A.W. CHESTERTON COMPANY, et al.,

Defendants.

Hon. Joan Madden
(Part 11)

Index No. 114120-06

**AFFIRMATION OF GREG A.
DADIKA, ESQ. IN SUPPORT OF
LABORATORY SUPPLY
DEFENDANTS' *IN LIMINE* MOTION
TO PRECLUDE EVIDENCE
REGARDING THE PRESENCE OF
DEFENDANTS' CATALOGS IN THE
LABORATORIES IN WHICH
PLAINTIFF WORKED OR STUDIED**

I, GREG A. DADIKA, being duly admitted to the bar of the State of New York and licensed to practice law before the Courts of this State, declare, under penalty of perjury, the following in support of the joint motion *in limine* to preclude Plaintiff Christian Holinka ("Plaintiff") from offering testimony or evidence that the Laboratory Supply Defendants' catalogs were present in any of the laboratories in which Plaintiff worked or studied during his career, which has been filed by and on behalf of Defendants Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"), ManorCare Health Services, Inc. (alleged to be a successor in interest to Central Scientific Company, a division of Cenco, Inc.) ("ManorCare"), Fisher Scientific International Inc. ("Fisher"), VWR International, Inc. ("VWR") and Univar USA Inc. ("Univar") (collectively, the "Laboratory Supply Defendants");

1. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from Transcript Volume II of the Deposition of Christian Holinka dated February 22, 2007.
2. The relief requested herein has not previously been sought, and is not frivolous.

WHEREFORE, the Laboratory Supply Defendants respectfully request that the relief requested in their instant application be granted in its entirety.

Dated: August 21, 2007

A handwritten signature in black ink, appearing to read 'Greg A. Dadika', written over a horizontal line.

Greg A. Dadika

REED SMITH LLP

Princeton Forrestal Village

136 Main Street, Suite 250

Princeton, New Jersey 0850

(609) 987-0050

Attorneys for Defendant

ManorCare Health Services, Inc.

Exhibit A

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">57</p> <p>1 2 SUPREME COURT 3 ALL COUNTIES WITHIN THE STATE OF NEW YORK 4 5 IN RE: NEW YORK CITY ASBESTOS LITIGATION 6 7 8 9 DEPOSITION UNDER ORAL 10 EXAMINATION OF 11 CHRISTIAN HOLINKA 12 (VOLUME II) 13 14 15 16 This Document Applies To: 17 CHRISTIAN HOLINKA 18 INDEX NO.: 114120-06 19 20 21 22 PRIORITY ONE COURT REPORTING SERVICES, INC. 23 899 Manor Road 24 Staten Island, New York 10314 25 (718) 983-1234</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">59</p> <p>1 2 APPEARANCES: 3 4 WEITZ & LUXENBERG, P.C. 5 Attorneys for Plaintiff 6 180 Maiden Lane, 17th Floor 7 New York, New York 10038 8 BY: BENJAMIN DARCHE, ESQ. 9 10 DRINKER, BIDDLE & REATH, LLP 11 Attorneys for Defendants VWR International, 12 Inc. and Univar USA, Inc. 13 One Logan Square 14 18th and Cherry Streets 15 Philadelphia, Pennsylvania 19103-6996 16 BY: DAVID F. ABERNETHY, ESQ. 17 18 REED SMITH, LLP 19 Attorneys for Defendant Manor Health Care 20 Princeton Forrestal Village 21 136 Main Street, Suite 250 22 P.O. Box 7839 23 Princeton, New Jersey 08543-7839 24 BY: GREG A. DADIKA, ESQ. 25 26 PEHLIVANIAN, BRAATEN & PASCARELLA, LLC. 27 Attorneys for Defendant Ingersoll Rand Co. 28 2430 Route 34 29 Manasquan, New Jersey 08736 30 BY: SYLVIA K. LEE, ESQ. 31 32 DARGER & ERRANTE, LLP 33 Attorneys for Defendant Lennox Industries 34 116 East 27th Street, 12th Floor 35 New York, New York 10016 36 BY: CRAIG GLANTZ, ESQ.</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">58</p> <p>1 2 Transcript of the deposition of the Plaintiff, 3 called for Oral Examination in the above-captioned 4 matter, said deposition being taken pursuant to 5 Federal Rules of Civil Procedure by and before 6 CHERYL F. BAREN, a Notary Public and Shorthand 7 Reporter, at the Offices of Weitz & Luxenberg, 120 8 Wall Street, New York, New York, on Thursday, February 9 22, 2007, commencing at approximately 10:30 in the 10 forenoon. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">60</p> <p>1 2 DRINKER, BIDDLE & REATH, LLP 3 Attorneys for Defendant Baxter Health Care 4 500 Campus Drive 5 Florham Park, New Jersey 07932-1047 6 BY: TIMOTHY J. FRASER, ESQ. 7 8 HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP 9 Attorneys for Defendant Fisher Scientific 10 40 Paterson Street 11 P.O. Box 480 12 New Brunswick, New Jersey 08903 13 BY: KRISTY KULINA LYONS, ESQ. 14 15 MCGIVNEY & KLUGER, P.C. 16 Attorneys for Defendant Beckman Coulter 17 80 Broad Street, 23rd Floor 18 New York, New York 10004 19 BY: LAURA HOLLMAN, ESQ. 20 21 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP 22 Attorneys for Defendant A.W. Chesterton 23 150 East 42nd Street 24 New York, New York 10017 25 BY: TODD DESIMONE, ESQ. 26 27 MALABY, CARLISLE & BRADLEY, LLC 28 Attorneys for Defendants Adience, CBS, 29 and Kewanee Scientific 30 150 Broadway 31 New York, New York 10038 32 BY: DAVID P. SCHAFER, ESQ. 33 KOO LEE, ESQ.</p>

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

Page 97

1 Christian Holinka 153
2 printing or anything on them that would identify their
3 manufacturer?
4 A They did not.
5 Q Or their supplier.
6 A They did not.
7 Q As an instructor did you have the
8 responsibility for ordering any pads that were used at
9 Mount Sinai?
10 A No.
11 Q If you needed to pick up a replacement pad
12 at Mount Sinai, where would you go?
13 A There was a central room for supplies for
14 the laboratory.
15 Q Was that also located on the 20th floor?
16 A Yes. It was really a large set of cabinets
17 in one of the laboratories.
18 Q Was it located in one of the three rooms
19 that you were in as an instructor?
20 A In one, yes.
21 Q If I asked you which one could you tell me?
22 A I believe a storage unit.
23 Q Do you know which particular room it was in
24 or you believe it was in one of them?
25 A I think it was in one.

Page 98

1 Christian Holinka 154
2 Q When you would go to this storage area, did
3 you see how the pads were kept in it?
4 A I saw it but I don't remember whether they
5 were stacked or next to each other.
6 Q And do you recall if there was any
7 packaging associated with any of these new pads that
8 you would take?
9 A I don't remember.
10 Q Do you know the brand, trade or
11 manufacturer's name of any of those pads?
12 A I do not know a specific brand.
13 Q Do you know who supplied those pads to
14 Mount Sinai during those years that you were an
15 instructor?
16 A Well, we had basically four suppliers,
17 Fisher Scientific, Van Waters and Rogers, American
18 Scientific, Senco. They were big catalogs, they
19 looked like a book with in the back their names. And
20 there were other companies also that I don't recall
21 who supplied highly specific parts, supplies but those
22 were the main companies and we may even have had a
23 standing account with one, two or three of them.
24 Q When you say "we," are you talking about
25 Mount Sinai itself or your particular department where

Page 99

1 Christian Holinka 155
2 you worked?
3 A In my department, my laboratory.
4 Q If there was such a standing type of
5 relationship within your department, who within your
6 department would have been the contact to deal with
7 with respect to that?
8 A The main person, Dr. Gursipide.
9 Q Doctor who?
10 A Erlio; E-R-L-I-O, G-U-R-P-I-D-E.
11 Q And is Dr. Gursipide still alive?
12 A Yes.
13 Q Is he still at Mount Sinai?
14 A No.
15 Q Do you know where he lives?
16 A I don't. He's in a retirement home
17 somewhere in the midwest.
18 Q When would have been the last time you had
19 occasion to have any contact with him?
20 A About ten years ago, eight years ago
21 probably.
22 Q How often would you use the mittens as an
23 instructor at Mount Sinai?
24 A Regularly.
25 Q Can you define that?

Page 100

1 Christian Holinka 156
2 A Once a day, whenever there was something
3 hot to touch, once a day, once every two days, twice a
4 day.
5 Q Did the physical appearance of these
6 mittens to you seem the same as those as you had
7 encountered earlier in your career?
8 A Yes.
9 Q Was there anything different about what
10 those mittens looked like as compared to the earlier
11 ones?
12 A Not to my recollection, no.
13 Q Besides those mittens did you use any other
14 types of gloves or mittens during your time as an
15 instructor?
16 A No.
17 Q Do you know the brand, trade or
18 manufacturer's name of any of those mittens that you
19 used while you were an instructor?
20 A No.
21 Q Do you know specifically who supplied any
22 of those mittens that you used as an instructor?
23 A Specific suppliers I don't know.
24 Q And you have mentioned four companies that
25 you believe generally provided supplies --

25 (Pages 97 to 100)

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p style="text-align: right;">Page 157</p> <p>1 Christian Holinka 213</p> <p>2 Mount Sinai, the time that you worked in the lab as an</p> <p>3 instructor or assistant professor. Tell me again all</p> <p>4 the companies that you recall that you described as</p> <p>5 standard suppliers at Mount Sinai?</p> <p>6 A I recall the major companies, Fisher</p> <p>7 Scientific, Van Waters and Rogers, American</p> <p>8 Scientific, Senco. And others were for specific</p> <p>9 things like hormones or specific research areas.</p> <p>10 Q And when you referred to these four</p> <p>11 companies that you just listed as major suppliers,</p> <p>12 what is the basis for that, did you know, did you have</p> <p>13 actual knowledge that they sold products that were</p> <p>14 used in the lab at Mount Sinai?</p> <p>15 (All defendants object to the form)</p> <p>16 THE WITNESS: Can I answer?</p> <p>17 MR. DARCHE: You can answer.</p> <p>18 A Yes, I did.</p> <p>19 Q And how did you know that they sold</p> <p>20 products to --</p> <p>21 A Well -- sorry.</p> <p>22 MR. DARCHE: Let him finish.</p> <p>23 Q How did you know that those companies sold</p> <p>24 products that were used in the lab at Mount Sinai?</p> <p>25 A First, we had large catalogs of those</p>	<p style="text-align: right;">Page 159</p> <p>1 Christian Holinka 215</p> <p>2 someone to order for you or would you actually do the</p> <p>3 ordering yourself?</p> <p>4 A I would ask somebody to include it in</p> <p>5 another order unless it was very urgent. And as I</p> <p>6 said that we may, may even have had a special ordering</p> <p>7 venue with one or several companies.</p> <p>8 Q When you asked someone at Mount Sinai to</p> <p>9 order something specifically for your research, who</p> <p>10 was the person that you asked?</p> <p>11 A My technician or the head of the</p> <p>12 laboratory.</p> <p>13 Q Did you ever specifically ask for Bunsen</p> <p>14 burner pads or mittens to be ordered specifically for</p> <p>15 your research?</p> <p>16 A No, I did not.</p> <p>17 Q So, those were the general supplies that</p> <p>18 were ordinarily ordered?</p> <p>19 A That is correct. Standard laboratory</p> <p>20 equipment.</p> <p>21 Q And who was the person who ordered those</p> <p>22 general kinds of supplies at Mount Sinai?</p> <p>23 A At my laboratory I could not tell you. We</p> <p>24 may have gotten it from the central supply room.</p> <p>25 Q So, whoever the actual employee was at</p>
<p style="text-align: right;">Page 158</p> <p>1 Christian Holinka 214</p> <p>2 companies. They're really catalogs, that's an</p> <p>3 understatement, they're like books, 600, 800 pages,</p> <p>4 whatever, with the names of those companies in the</p> <p>5 back of the books clearly visible.</p> <p>6 Secondly, for my specific research I</p> <p>7 actually ordered, may have ordered things from those</p> <p>8 companies. If you needed a small or a minor flask or</p> <p>9 something specifically related to your own research.</p> <p>10 Q You started by saying "ordered" and then</p> <p>11 you said "may have ordered," which is it? Do you have</p> <p>12 an actual recollection of specific companies that you</p> <p>13 ordered from for your research at Mount Sinai?</p> <p>14 A I did order from certainly any one or</p> <p>15 several of those companies, I could not tell you at</p> <p>16 this time which one and what I ordered.</p> <p>17 Q And you said for your specific research.</p> <p>18 When you ordered for your specific research, were you</p> <p>19 ordering general lab supplies or unusual things that</p> <p>20 were just needed for your work?</p> <p>21 MR. DARCHE: I am going to just object to</p> <p>22 the terminology of "unusual."</p> <p>23 MR. ABERNETHY: Let me rephrase the</p> <p>24 question.</p> <p>25 Q When you yourself went to -- would you ask</p>	<p style="text-align: right;">Page 160</p> <p>1 Christian Holinka 216</p> <p>2 Mount Sinai who got those things from the companies,</p> <p>3 you do not know the person's name?</p> <p>4 A My technician may have gotten some but I do</p> <p>5 not recall the details.</p> <p>6 Q Can you tell me from your own knowledge</p> <p>7 which, if any, of those major suppliers sold Bunsen</p> <p>8 burner pads to Mount Sinai, which specific companies?</p> <p>9 A I would not know a specific company.</p> <p>10 Q Can you tell me which specific companies</p> <p>11 among those four, if any, sold mittens to Mount Sinai?</p> <p>12 (All defendants object)</p> <p>13 A No, I could not.</p> <p>14 Q Did you ever talk to any of the people who</p> <p>15 ordered supplies at Mount Sinai about which specific</p> <p>16 companies they ordered specific items from?</p> <p>17 A No, I didn't.</p> <p>18 Q Did you ever see any documents at Mount</p> <p>19 Sinai that indicated what company's particular items</p> <p>20 had been ordered from?</p> <p>21 A To the best of my knowledge, yes, ordering</p> <p>22 forms that specified VWR, Fisher Scientific.</p> <p>23 Q Let me ask you about that. When you say</p> <p>24 ordering forms, do you mean the blank forms that were</p> <p>25 used to place an order or a form that had already been</p>

40 (Pages 157 to 160)

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p style="text-align: right;">Page 161</p> <p>1 Christian Holinka 217</p> <p>2 filled out with a specific order?</p> <p>3 A Very likely both, filled out forms and</p> <p>4 blank forms. And I do not even recall the type of the</p> <p>5 form.</p> <p>6 Q Do you recall any of the specific contents</p> <p>7 of any filled out forms that listed specific items</p> <p>8 that were being ordered?</p> <p>9 A No, I don't.</p> <p>10 Q Where were the catalogs at Mount Sinai?</p> <p>11 A At the laboratory, shelves.</p> <p>12 Q How many catalogs were there?</p> <p>13 A Twenty, twenty-five.</p> <p>14 Q Did each catalog cover a different company?</p> <p>15 A Yes.</p> <p>16 Q Do you remember the names of any of the</p> <p>17 other companies?</p> <p>18 A No, I don't.</p> <p>19 Q Did any of the other companies other than</p> <p>20 the four that you listed sell Bunsen burner pads?</p> <p>21 MR. DARCHE: If you know.</p> <p>22 Q Well, they are all if you know. Let me</p> <p>23 repeat what has already been said: I only want to</p> <p>24 know what you know, I do not want you to guess.</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 163</p> <p>1 Christian Holinka 219</p> <p>2 Q While you were at Mount Sinai, did you ever</p> <p>3 see any of the original packaging or cartons or crates</p> <p>4 that asbestos mittens came in?</p> <p>5 A To the best of my recollection, I did not.</p> <p>6 Q Do you know whether or not Mount Sinai</p> <p>7 bought asbestos Bunsen burner pads from any companies</p> <p>8 other than the four that you specifically recall the</p> <p>9 names of?</p> <p>10 A I do not know.</p> <p>11 Q Do you know if they bought mittens from any</p> <p>12 other companies?</p> <p>13 A I do not know.</p> <p>14 Q Let me touch on a question that you were</p> <p>15 asked with respect to certain places but I want to</p> <p>16 make sure that we covered it for all.</p> <p>17 During any of the time periods that you</p> <p>18 worked with Bunsen burner pads, were there any pads</p> <p>19 sold by any specific company that looked unique or</p> <p>20 different from the pads sold by other companies?</p> <p>21 MR. DARCHE: I am just going to object to</p> <p>22 the form and the basis is it is too broad. Is</p> <p>23 there a specific, is there a specific, you know,</p> <p>24 thing that you are -- it would be different if</p> <p>25 you are talking about the size, the width, the</p>
<p style="text-align: right;">Page 162</p> <p>1 Christian Holinka 218</p> <p>2 Q You do not know whether any of the others</p> <p>3 did or didn't.</p> <p>4 A That's correct, I don't know.</p> <p>5 Q Do you know whether any of the companies</p> <p>6 other than those four that you just named sold</p> <p>7 asbestos mittens?</p> <p>8 A I don't know.</p> <p>9 Q Who else used the catalogs or --</p> <p>10 MR. ABERNETHY: Let me withdraw that.</p> <p>11 Q Who else looked at the catalogs besides</p> <p>12 you, if you know?</p> <p>13 A In terms of names or people that worked at</p> <p>14 the lab?</p> <p>15 Q Either. Whatever information --</p> <p>16 A Pretty much graduate students and post</p> <p>17 docs, post doctoral students.</p> <p>18 Q Did the graduate students or post doctorate</p> <p>19 students order from the catalogs?</p> <p>20 A Very likely, yes. That was the source of</p> <p>21 information.</p> <p>22 Q While you were at Mount Sinai, did you ever</p> <p>23 see any of the original packaging or crates or cartons</p> <p>24 that any Bunsen burner pads came in?</p> <p>25 A No, I did not.</p>	<p style="text-align: right;">Page 164</p> <p>1 Christian Holinka 220</p> <p>2 color, it could be a million things.</p> <p>3 MR. ABERNETHY: Let me try it a different</p> <p>4 way and we will break it down so that we are not</p> <p>5 too broad, we will take it place by place.</p> <p>6 Q While you worked with or handled Bunsen</p> <p>7 burner pads at Mount Sinai, if you went into the lab</p> <p>8 on a particular day and picked up a particular pad,</p> <p>9 would there be anything about the appearance of that</p> <p>10 pad that would enable you to identify who specifically</p> <p>11 made or sold it?</p> <p>12 A Not about the appearance but in retrospect</p> <p>13 it is likely that they were different sizes.</p> <p>14 Q You used that term before "it is likely," I</p> <p>15 want to probe that a little bit more.</p> <p>16 A Or it -- okay.</p> <p>17 Q Let me ask you a specific question: Do you</p> <p>18 specifically recall as you sit here today handling</p> <p>19 different sizes of Bunsen burner pads?</p> <p>20 A No, I don't.</p> <p>21 Q Is there anything that you can recall about</p> <p>22 any specific Bunsen burner pad that you handled at</p> <p>23 Mount Sinai that enabled you to identify it as coming</p> <p>24 from a particular maker or supplier?</p> <p>25 A No.</p>

41 (Pages 161 to 164)

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p style="text-align: right;">Page 173</p> <p>1 Christian Holinka 229</p> <p>2 MR. DARCHE: You can answer if you can.</p> <p>3 A Okay, I don't recall exactly whether I said</p> <p>4 I didn't see it. Wasn't the question more whether the</p> <p>5 outside and the inside were similar?</p> <p>6 Q Did you ever see the material that was</p> <p>7 underneath the external surface of the asbestos</p> <p>8 mittens that you worked with?</p> <p>9 A I did not.</p> <p>10 MR. DARCHE: Off the record.</p> <p>11 (Discussion held off the record)</p> <p>12 Q Do you recall any of the specific companies</p> <p>13 that sold Bunsen burner pads to the lab that you</p> <p>14 worked in at Columbia Presbyterian?</p> <p>15 A No, I don't.</p> <p>16 Q Do you recall any of the specific companies</p> <p>17 that sold Bunsen burner pads to the lab that you</p> <p>18 worked in at SUNY Stony Brook?</p> <p>19 A No, I don't.</p> <p>20 Q Do you recall any of the specific companies</p> <p>21 that sold Bunsen burner pads to the lab where you did</p> <p>22 your chemistry lab at Hunter College?</p> <p>23 A No.</p> <p>24 Q Do you recall any of the specific companies</p> <p>25 that sold Bunsen burner pads to the laboratory where</p>	<p style="text-align: right;">Page 175</p> <p>1 Christian Holinka 231</p> <p>2 Bunsen burner pads to the lab at Columbia Presbyterian?</p> <p>3 A No, I don't.</p> <p>4 Q As you sit here today can you tell me what</p> <p>5 specific companies sold Bunsen burner pads to the lab</p> <p>6 at Booth Hospital?</p> <p>7 A No, I don't know.</p> <p>8 Q Do you know if any companies other than the</p> <p>9 ones that you mentioned earlier as standard suppliers</p> <p>10 sold Bunsen burner pads to the lab at Booth Hospital?</p> <p>11 A No, I don't know.</p> <p>12 Q Let me ask you the same couple of questions</p> <p>13 about mittens: As you sit here now can you identify</p> <p>14 any specific company that sold Bunsen burner pads used</p> <p>15 in the lab at Booth Hospital?</p> <p>16 A No, I cannot identify a specific company.</p> <p>17 MR. DARCHE: Off the record.</p> <p>18 (Discussion held off the record)</p> <p>19 Q Again, the question is, can you identify a</p> <p>20 specific company that sold mittens to the lab at Booth</p> <p>21 Hospital?</p> <p>22 A No, I cannot.</p> <p>23 Q And do you know whether any company other</p> <p>24 than the standard suppliers sold mittens to Booth</p> <p>25 Hospital?</p>
<p style="text-align: right;">Page 174</p> <p>1 Christian Holinka 230</p> <p>2 you did your academic work at the University of</p> <p>3 California at Berkeley?</p> <p>4 A No, I don't. But with there again, it was</p> <p>5 a large research unit and they used standard</p> <p>6 suppliers.</p> <p>7 Q And tell me again who the standard</p> <p>8 suppliers were that you recall that were used in the</p> <p>9 large research lab at UC Berkeley.</p> <p>10 A Fisher Scientific, Van Waters and Rogers,</p> <p>11 American Scientific, Senco.</p> <p>12 Q But as you sit here today, can you tell me</p> <p>13 which specific companies, if any, in that group sold</p> <p>14 Bunsen burner pads for that lab?</p> <p>15 A I could not.</p> <p>16 Q Do you know whether any other companies</p> <p>17 sold Bunsen burner pads to that lab?</p> <p>18 A I do not know.</p> <p>19 Q Do you know whether any other companies</p> <p>20 sold Bunsen burner pads to the lab at Hunter College?</p> <p>21 A No, I don't know.</p> <p>22 Q Do you know if any other companies sold</p> <p>23 Bunsen burner pads to the lab at SUNY Stony Brook?</p> <p>24 A No, I don't know.</p> <p>25 Q Do you know if any other companies sold</p>	<p style="text-align: right;">Page 176</p> <p>1 Christian Holinka 232</p> <p>2 A I do not know.</p> <p>3 Q Can you identify any specific company that</p> <p>4 sold mittens to any of the labs that you did work in</p> <p>5 at Cal Berkeley?</p> <p>6 A No, I cannot.</p> <p>7 Q Do you know whether anybody other than</p> <p>8 standard suppliers as you described them sold mittens</p> <p>9 to the lab at UCal Berkeley?</p> <p>10 A No, I do not know.</p> <p>11 Q Do you know who specifically sold mittens</p> <p>12 to the lab at Hunter College?</p> <p>13 A No, I don't.</p> <p>14 Q Do you know whether any companies other</p> <p>15 than those you recall as the standard suppliers sold</p> <p>16 at Hunter College mittens?</p> <p>17 A No, I don't.</p> <p>18 Q Can you identify the specific company that</p> <p>19 sold mittens to the lab at SUNY Stony Brook?</p> <p>20 A No, I don't.</p> <p>21 Q Do you know whether any other than the</p> <p>22 standard suppliers did?</p> <p>23 A I don't.</p> <p>24 Q Do you know who sold, the specific company</p> <p>25 who sold mittens to the lab at Columbia Presbyterian?</p>

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p style="text-align: right;">Page 177</p> <p>1 Christian Holinka 233</p> <p>2 A No, I don't.</p> <p>3 Q Do you know if any companies other than</p> <p>4 those you described as the standard suppliers did?</p> <p>5 A No, I don't.</p> <p>6 Q Without going through every location let me</p> <p>7 just ask you this: Do you recall as you sit here</p> <p>8 today ever discussing with any of the people who were</p> <p>9 responsible for ordering supplies at any of these labs</p> <p>10 the specific sources they used to get Bunsen burner</p> <p>11 pads?</p> <p>12 A No, I do not recall.</p> <p>13 Q Do you recall ever talking with any of</p> <p>14 those people about the specific sources they used to</p> <p>15 get asbestos mittens?</p> <p>16 A No, I do not recall.</p> <p>17 Q Do you have or do you know the location of</p> <p>18 any documents that might indicate what specific</p> <p>19 companies sold to any of the labs where you worked?</p> <p>20 A No, I don't.</p> <p>21 Q Do you recall answering written questions</p> <p>22 called interrogatories in connection with this</p> <p>23 lawsuit?</p> <p>24 MR. DARCHE: Answer the question to the</p> <p>25 best of your ability, if you can.</p>	<p style="text-align: right;">Page 179</p> <p>1 Christian Holinka 235</p> <p>2 Q Do you believe that you were exposed to</p> <p>3 asbestos at any location from a product called an</p> <p>4 autoclave?</p> <p>5 A I'm not sure. Initially I thought maybe</p> <p>6 but I'm not even sure if it contains, an autoclave</p> <p>7 contains asbestos.</p> <p>8 Q You are familiar with a product or a type</p> <p>9 of product referred to as an autoclave?</p> <p>10 A Yes.</p> <p>11 Q What is an autoclave?</p> <p>12 A An autoclave sterilizes at high heat and</p> <p>13 steam bacterial cultures or anything that you may want</p> <p>14 to sterilize.</p> <p>15 Q In any of the laboratory or other work that</p> <p>16 you have done, which the other counsel went over in</p> <p>17 great detail earlier, in any of that work did you work</p> <p>18 with autoclaves?</p> <p>19 A I did in the Army and I did at Sinai.</p> <p>20 Q What specifically did you do with</p> <p>21 autoclaves in the Army?</p> <p>22 A Put in bacterial cultures, TB cultures,</p> <p>23 gonorrhea cultures after you had diagnosed them and</p> <p>24 sterilized them.</p> <p>25 Q Do you know the makers or suppliers of any</p>
<p style="text-align: right;">Page 178</p> <p>1 Christian Holinka 234</p> <p>2 A I filled out some questionnaires related to</p> <p>3 Mr. Darche's questions.</p> <p>4 Q Is it your understanding that your lawyers</p> <p>5 served on the other parties to this case written</p> <p>6 answers to specific questions including questions</p> <p>7 about your asbestos exposures, do you have an</p> <p>8 understanding about that?</p> <p>9 A No, I don't have any direct understanding.</p> <p>10 Q I will represent to you that it is my</p> <p>11 understanding that answers to written interrogatories</p> <p>12 were served on your behalf in this litigation and one</p> <p>13 of the answers to the written interrogatories makes</p> <p>14 reference to potential exposure to asbestos in</p> <p>15 connection with a product called an autoclave. Do you</p> <p>16 recall answering any question indicating that you were</p> <p>17 exposed to asbestos from a product called an</p> <p>18 autoclave?</p> <p>19 MR. DARCHE: Objection. The</p> <p>20 interrogatories that you are referring to were</p> <p>21 not verified by this witness, so it is my</p> <p>22 position that you are not really confronting him</p> <p>23 with something that he has verified.</p> <p>24 MR. ABERNETHY: Well, forget the</p> <p>25 verification, let me just ask a simpler question.</p>	<p style="text-align: right;">Page 180</p> <p>1 Christian Holinka 236</p> <p>2 of the autoclaves that you worked with in the Army?</p> <p>3 A I don't.</p> <p>4 Q Can you describe the physical appearance of</p> <p>5 any of the autoclaves you worked with in the Army?</p> <p>6 A Yeah. It's typically a large round tube</p> <p>7 about -- stainless steel on the outside, about 4 feet,</p> <p>8 5 feet long, about 3 feet in diameter that has a door</p> <p>9 with this circular handle to close tight and then you</p> <p>10 push a few buttons to let the steam and the heat in.</p> <p>11 Q Did you work with more than one autoclave</p> <p>12 while you were in the Army?</p> <p>13 A I don't recall exactly but I don't believe</p> <p>14 so.</p> <p>15 Q And am I correct you do not know who made</p> <p>16 or sold that autoclave, the one that you remember?</p> <p>17 A You are correct, I don't remember.</p> <p>18 Q And as you sit here today you do not</p> <p>19 remember whether it contained any asbestos or not?</p> <p>20 A That's correct, I don't know.</p> <p>21 Q What did you do with an autoclave or</p> <p>22 autoclaves at Mount Sinai?</p> <p>23 A Sterilize cell cultures, culture dishes and</p> <p>24 media.</p> <p>25 Q Was it one device that you worked with</p>

45 (Pages 177 to 180)

Holinka v. Asbestos
February 22, 2007

Christian Holinka
II

<p>1 Christian Holinka 245</p> <p>2</p> <p>3 WITNESS CERTIFICATION</p> <p>4</p> <p>5 I have read the foregoing transcript of my</p> <p>6 testimony and find it to be true and accurate to</p> <p>7 the best of my knowledge and belief.</p> <p>8</p> <p>9</p> <p>10 _____</p> <p>11 CHRISTIAN HOLINKA</p> <p>12 Subscribed and sworn to</p> <p>13 before me on this _____ day</p> <p>14 of _____, 2007.</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 NOTARY PUBLIC</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 189</p> <p>1 CERTIFICATE OF NOTARY 247</p> <p>2</p> <p>3 I, CHERYL F. BAREN, a Stenotype Shorthand</p> <p>4 Reporter and Notary Public within and for the State of</p> <p>5 New York, do hereby certify that the within Continued</p> <p>6 Examination Before Trial of CHRISTIAN HOLINKA was held</p> <p>7 before me and I faithfully and impartially recorded</p> <p>8 stenographically the questions, answers and colloquy.</p> <p>9</p> <p>10 I further certify that after said examination was</p> <p>11 recorded stenographically by me, it was reduced to</p> <p>12 typewriting under my supervision, and I hereby submit</p> <p>13 that the within contents of said examination are true</p> <p>14 and accurate to the best of my ability.</p> <p>15</p> <p>16 I further certify that I am not a relative of nor</p> <p>17 an attorney for any of the parties connected with the</p> <p>18 aforesaid examination, nor otherwise interested in the</p> <p>19 testimony of the witness.</p> <p>20</p> <p>21</p> <p>22 _____</p> <p>23 CHERYL F. BAREN</p> <p>24</p> <p>25</p>
<p>1 246</p> <p>2 INDEX TO TESTIMONY</p> <p>3 Page Line</p> <p>4 Continued Direct Examination by 63 8</p> <p>5 Mr. Schaffer</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Cross-Examination by Mr. Abernethy 210 2</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 190</p>

48 (Pages 189 to 191)

PRIORITY ONE REPORTING . (718) 983-1234

e8dafad2-4857-466a-91fb-6838f1d307e5